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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/576,438	04/09/2007	Dan G. Siegel	20737-PCT-US	2428

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BEMIS COMPANY, INC.  
Patent and Trademark Department  
2200 BADGER AVENUE  
OSHKOSH, WI 54904

EXAMINER
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PATTERSON, MARC A

ART UNIT	PAPER NUMBER
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1794

MAIL DATE	DELIVERY MODE
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07/22/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/576,438	<b>Applicant(s)</b> SIEGEL ET AL.	
	<b>Examiner</b> MARC A. PATTERSON	<b>Art Unit</b> 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-24, 26 and 27 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-24, 26 and 27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>1/30/08</u> . | 6) <input type="checkbox"/> Other: ____.  |

**DETAILED ACTION**

***Claim Rejections – 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1 – 4, 6 – 11, 16, 19 – 24 and 26 are rejected under 35 U.S.C. 102(b) as being anticipated by Meier et al. (U.S. Patent No. 6,623,773 B2) as evidenced by Shimp et al (U.S. Patent No. 4,781,934).

With regard to Claim 1, Meier et al disclose a food packaging film (column 2, lines 63 – 65) comprising a food layer capable of contacting a myoglobin food product (red meat; column 3, lines 45 – 47) held within a package formed within the film (substrate; column 2, line 44) and a food treatment layer (column 2, line 45) comprising a curing agent comprising salt (column 3, lines 45 – 47) comprising nitrite (column 1, lines 20 - 24), therefore a nitrogen oxide – containing compound. Meier et al do not disclose that the layer interacts with the food product to produce a desirable color, but Shimp et al disclose that curing of meat produces a red color (column 1, lines 10 - 15); the claimed aspect of interacting with the food product to produce a desirable color is therefore inherent to Meier et al. With regard to the claimed aspect of the film being ‘for use in creating and stabilizing a desirable color on a viewable surface of a raw myoglobin - containing food product’ is directed to an intended use and is therefore given little patentable weight.

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With regard to Claims 2 – 4 and 6 – 9, the film is a barrier to oxygen (impermeable to air; column 5, lines 20 – 25).

With regard to Claim 10, the food contact is adhered to the substrate, and is therefore an adhesive layer.

With regard to Claim 11, at least one additional film layer is disposed on the food contact layer comprising an adhesive layer (column 2, line 45).

With regard to Claims, 16, 19, 21 – 24 and 26, Meier et al therefore disclose release of the nitrogen - containing compound in a controlled manner and a method comprising providing the film with the oxide of nitrogen.

With regard to Claim 20, Meier et al disclose permeating the film with the oxide of nitrogen (the oxide of nitrogen is massaged into the adhesive; column 4, line 42).

***Claim Rejections – 35 USC § 103(a)***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 5 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Meier et al. (U.S. Patent No. 6,623,773 B2).

Meier et al disclose a curing agent comprising nitrite as discussed above. With regard to Claims 5 and 27, Meier et al fail to disclose a nitrite comprising sodium nitrite in an amount sufficient to transfer between 0.0008 and 0.016 milligram per square inch to the product within

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96 hours. However, because Meier et al disclose nitrite, it would have been obvious for one of ordinary skill in the art to have provided for sodium nitrite, as sodium nitrite is a member of the group of nitrite salts. It also would have been obvious for one of ordinary skill in the art to have determined, through routine optimization, the desired amount of sodium nitrite to the product depending on the desired amount of coloring.

5. Claims 12 – 15 and 17 – 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Meier et al. (U.S. Patent No. 6,623,773 B2) in view of Ramsbottom (U.S. Patent No. 2,621,129).

Meier et al disclose a film for packaging meat as discussed above. With regard to Claim 12, Meier et al fail to disclose a vacuum package comprising film.

Ramsbottom teach a vacuum package (column 5, lines 8 – 16) comprising film (column 2, line 31) for food, for the purpose of retaining color (column 1, lines 6 – 12).

It therefore would have been obvious for one of ordinary skill in the art to have provided for packaging comprising vacuum packaging in Meier et al in order to retain color as taught by Ramsbottom.

With regard to Claims 13 – 14, the food packaging comprises a tray adapted to hold food and the film positioned over the tray as shown in Figure 4.

With regard to Claim 15, the nitrogen containing compound is applied to the tray, as the film is positioned over the tray.

With regard to Claim 17, Ramsbottom therefore disclose a method of packaging comprising applying the nitrogen oxide to the film and evacuating oxygen.

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With regard to Claim 18, Ramsbottom discloses the introduction of other gases after evacuation of oxygen (column 1, line 9).

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marc A Patterson whose telephone number is 571-272-1497.

The examiner can normally be reached on Mon - Fri 8:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Marc A Patterson/  
Primary Examiner, Art Unit 1794